IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8103 OF 2006

Shri Savata Shankar Raut ..Petitioner

Vs.

1. Shri Namdeo Bhujaba Raut & Ors. ..Respondents

Mr.K.B.Sonwalkar for the petitioner

**CORAM : A.P.DESHPANDE, J**

**DATED : 19TH DECEMBER, 2006**

P.C.:

1. Rejection of an application seeking condonation of delay by the District Judge, Baramati has given rise to the filing of this writ petition.

2. The respondent no.1 instituted proceedings against respondent nos.2 to 4 for grant of probate in respect of a will executed by deceased Bhujaba Shiva Raut in favour of the original applicant on 23.2.90. The present petitioner was not impleaded as party respondent in the Misc.Civil Application no.63 of 1995. The petitioner hence, moved an

application for his impleadment as party respondent. The same was granted by the trial court and the petitioner was impleaded as party respondent in the said application. Despite his impleadment as party respondent, he did not appear before the court. Hence, notice / summons was issued to the petitioner at his native place.The Bailiff reported that he tried to tender the notice to the petitioner but he refused to accept the same on the ground that he is posted at Bombay for his official work and hence, notice needs to be effected and served at Bombay.

3. Believing upon the bailiff’s report about the service of notice to the petitioner, the trial court passed final orders on the probate application. Aggrieved thereby, the petitioner moved the District Judge and as there was delay of about 1 year 3 months, he moved an application seeking condonation of delay. The ground put forth by the petitioner for seeking condonation was that at no point of time, he was served with the notice. He further submitted that during the relevant period on which the petitioner is allegedly

effected service by the Bailiff, he was on leave and denied the factum of service of notice. The petitioner laid oral evidence as well. After taking into consideration the evidence laid by the petitioner and the material on record including the bailiff's report, the first appellate court has held that in the first place as the petitioner had himself applied for his impleadment as party respondent in the proceedings, there was no need to issue notice to the petitioner as knowledge in regard to the pendency of the proceedings would be inferred from the fact that the petitioner applied for his impleadment. In the second place, the court held that the day on which bailiff claims to have attempted to serve notice on the petitioner at his native place, the petitioner was admittedly on leave and was not on duty. This has been taken as a circumstance to support the bailiff's report about his attempt to effect service on the petitioner. On the contrary, the petitioner claims that during the said period, he was sick and had not gone to the native place.

4. After appreciating the material on record

and taking overall view of the matter, the District Judge has recorded a finding that the petitioner has failed to establish sufficient cause for belated filing of the matter and hence, rejected the application seeking condonation of delay of about 1 year 3 months.

5. Perused the order. The order does not suffer from any patent illegality or perversity which warrants interference at the hands of this court in exercise of Writ Jurisdiction. In the result, as there is no merit in the petition, petition is summarily rejected.

**( SHRI A.P.DESHPANDE, J )**